IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.568 of 2000.

Judgement reserved on: 29.6.2007

Date of decision: 6.7.2007.

Achhar Singh and another

…….Appellants

Versus

The Bhakra Beas Management Board and Ors.

…. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants : Mr. Ramakant Sharma, Advocate.

For the Respondents : Mr. N.K. Sood, Advocate.

Kuldip Singh, Judge.

The plaintiffs are in appeal against judgment, decree dated 29.8.2000 passed by learned District Judge, Mandi in Civil Appeal No.1 of 1998, allowing the appeal and dismissing the suit filed by plaintiffs. The parties are referred in the same manner as in the trial Court.

2. The facts as emerge from the plaint are that plaintiffs filed suit on 29.8.1995 for recovery of Rs.29,738.34/- against defendants. The further facts are there is a Gharat (water mill) on land comprised in Khata Khatauni No.296/394, Khasra No.1067,

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

measuring 0-0-6 bigha, situated in Muhal Mandar, Hadbast No.236, Illaqua Balh, Tehsil Sadar, Distict Mandi, H.P. This Gharat is owned and possessed by plaintiffs. The Maloun (head) of the kuhal (water channel) of the Gharat (Water Mill) had stopped functioning due to silt ejector which was installed by defendants at Baggi Channel to clear the silt from the channel. This silt is thrown into the maloun of the kuhal of the Gharat which rendered the Gharat non functional. The plaintiffs have suffered loss of Rs.29,738.34/- w.e.f. 18.6.1994 to 17.6.1995 for a period of one year. It has been alleged that earlier also plaintiff filed suit for recovery of Rs.24,850/- which was decreed by the trial Court but dismissed by learned District Judge on the ground of limitation. They filed an appeal before High Court. The plaintiffs after serving notice to the defendants, which was not replied, filed the suit.

3. The defendants have contested the suit by filing joint written statement wherein preliminary objections of maintainability, cause of action, estoppel, limitation and mis-joinder of necessary parties have been taken. On merits, they have denied the claim of the plaintiffs. They have disputed the existence of the Gharat over disputed land and the revenue entries showing the Gharat contrary to the factual position. They have denied that the Gharat stopped functioning due to silt ejector of the defendants. The damage report relied by the plaintiffs has also been denied.

4. The trial Court decreed the suit on 15.11.1997 and passed a decree of Rs. 29,738.34/- in favour of plaintiffs. The defendants filed appeal against the judgment, decree dated

15.11.1997 which was allowed by learned District Judge and therefore, plaintiffs are in appeal in this Court.

5. The appeal has been admitted on following substantial questions of law:-

1. *Whether the learned lower appellate court is right in holding that the suit was barred by limitation especially when a finding was recorded by the learned trial court as that his plea was not pressed by the defendants?*
2. *Whether the learned lower appellate court misread, misinterpreted as well as mis-appreciated the Exhibit PW-2/B, the damage report as well as Aks Tatima Ext.DW-2/A?*
3. *Whether the learned lower appellate court is right in not discussing the documentary evidence Ext. PA to PG perusal of which would go to show that the suit of the appellants ought not to have been dismissed?*
4. *Whether the judgment and decree is the result of complete misreading, misappreciation of statements of PW1 to PW3 and DW1?*

In substantial question of law No.2 Aks tatima has been referred as Ex.DW-2/A whereas it is Ex.PW-2/A.

6. I have heard the learned counsel for the parties and have also gone though the records.

7. The learned counsel for the plaintiffs/appellants has submitted that the lower appellate Court has misconstrued, misinterpreted the oral and documentary evidence on record,

the documentary evidence in the form of Ex.PA to Ex.PG has not been discussed in the impugned judgment. The suit has been wrongly held to be time barred. The learned counsel for the defendants has submitted that the plaintiffs have not pleaded their right to have water through kuhal for running the Gharat. In absence of such right, plaintiffs are not entitled to any damages. In any case, the plaintiffs have failed to prove any loss. He has supported the impugned judgment, decree.

Substantial Questions of law 1 to 4

8. All these substantial questions of law are being disposed of collectively in view of the fact that these are interconnected.

9. Main grievance of the plaintiffs is that lower appellate court has misconstrued, misinterpreted damage report Ex.PW-2/B and Aks tatima Ex.PW-2/A. It is the case of plaintiffs that learned Distict Judge has not considered documentary evidence Ex.PA which is a copy of common statement dated 13.10.1995 of some persons, Ex.PB copy of letter of Sub Divisional Officer to the Presidents Gram Panchayat Baggi and Gram Panchayat Luhara, Ex.PC copy of order dated 27.8.1991 of Land Acquisition Officer Beas Satluj Link Project, Mandi, Ex.PD, copy of judgment dated 7.12.1990 in Civil Suit No.80 of 1988 of learned sub Judge Ist Class (I) Mandi, Ex.PE copy of judgment dated 7.3.1994 in Civil Appeal No.23 of 1991 of learned District Judge, Mandi, Ex.PF copy of notification under Section 4 of the Land Acquisition Act and Ex.PG copy of judgment dated 18.8.1996 in Civil Suit No.3 of 1992 of learned Sub Judge Ist Class (I) Mandi. The Ex.PA, Ex.PB and Ex.PC do not create any right in

favour of the plaintiffs to have water in the channel for running the Gharat in question . The suit of Achhar Singh was decreed for Rs.24,850/- vide judgment Ex.PD but judgment Ex.PD was set aside vide judgment dated 7.3.1994 Ex.PE. The Ex.PF is the notification under Section 4 of the Land Acquisition Act and it has nothing to do with the right of the plaintiffs to run Gharat in question.

10. The learned Sub Judge Ist Class (I) Mandi vide judgment dated 18.8.1994 Ex. PG dismissed the suit for injunction of Union of India and another restraining the Land Acquisition Collector to recover damages awarded to defendants No.1 and 2 of that suit who are none else but the plaintiffs in the present case. The said suit was dismissed in view of Section 41(b) of the Specific Relief Act. In that suit the rights of the parties were not determined. The plaintiffs cannot take benefit of judgment Ex.PG.

11. The perusal of the plaint in the present case would show that plaintiffs have not pleaded their right to run the Gharat through channel. The plaintiffs have not pleaded any customary, riparian or other right in the plaint for running the Gharat through channel. The learned counsel for the defendants has submitted that in absence of any right of plaintiffs to run the Gharat through channel, the plaintiffs are not entitled to any damages even if assuming their Gharat was affected due to the clearance of the silt and thrown into the malaun of the Gharat . The plaintiffs will have to prove some right to have water in the channel for running the Gharat. It is the case of the plaintiffs that due to extraction of silt by defendants the water flow in the

channel meant for Gharat was badly affected and therefore the plaintiffs have suffered damages. The lower Appellate Court has recorded a specific finding that plaintiffs have miserably failed to prove any act or omission on the part of the defendants which caused legal injury to the plaintiffs. The plaintiffs were required to prove that the non-functioning of their Gharat was the direct result of some act or omission on the part of the defendants which infringed their legal right. The pleadings of the plaintiffs and the evidence adduced by them is not cogent enough for holding that the alleged injury sustained by them is the result of violation of their legal right by defendants. In absence of existing legal right in favour of plaintiffs to have running water in the kuhal for operating their Gharat it cannot be said that plaintiffs have suffered any loss, damage due to the alleged acts or omission of defendants. It has not been pointed out on what material facts statements of PW 1, to PW-3 and DW-1 were misconstrued and misappreciated by the lower appellate court.

12. There is no averments in the plaint when the Gharat stopped functioning but damages have been claimed for the period 18.6.1994 to 17.6.1995. The suit is based on alleged recurring cause of action and is within limitation for claiming damages for the period 18.6.1994 to 17.6.1995 under Section 22 read with Article 85 of the Limitation Act, as the suit was filed on 29.8.1995. The finding of learned District Judge on the point of limitation is set aside and it is held that suit is within limitation. The substantial question of law No.1 is held in favour of plaintiffs. But it does not improve the case of plaintiffs on merits. The plaintiffs have failed to prove that they have

suffered any loss due to violation of their existing right to have water in the kuhal for operating Gharat by any act or omission of defendants. The learned counsel for plaintiffs has failed to make out any case for interference on merits of the claim. The substantial questions of law No.2 to 4 are decided in favour of defendants and against plaintiffs.

13. No other point was urged.

14. In view of above, the appeal is dismissed. No costs.

(Kuldip Singh)
Judge.

July 6, 2007
(sks)